

STATE OF MICHIGAN  
COURT OF APPEALS

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ANDREW THOMAS PFOSCH,

Plaintiff-Appellant,

v

SECRETARY OF STATE,

Defendant-Appellee.

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UNPUBLISHED  
November 4, 1997

No. 199431  
Oakland Circuit Court  
LC No. 96-517304-AL

Before: Corrigan, C.J., and Griffin and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals by right the order denying his petition for restoration of his driver's license. We affirm.

This case arises from plaintiff's fourth arrest for drunk driving. Plaintiff was convicted of operating while impaired (OWI) in 1985, and operating under the influence (OUIL) in 1987 and 1988. Defendant administratively revoked plaintiff's driver's license in 1989, but granted him a restricted license three years later. After plaintiff's arrest in 1994, defendant reinstated its prior revocation of plaintiff's license. Plaintiff subsequently was convicted of OUIL 3d, formerly MCL 257.625(6)(d); MSA 9.2325(6)(d). The trial court did not revoke plaintiff's license. However, after receiving proof of the conviction, defendant administratively revoked plaintiff's license pursuant to MCL 257.303(2); MSA 9.2003(2). Plaintiff thereafter petitioned for restoration of his restricted license. The trial court denied the petition because, it determined, the court lacked jurisdiction under MCL 257.323(6); MSA 9.2023(6), to reinstate plaintiff's license.

Plaintiff first argues that the trial court erroneously determined that it did not have jurisdiction to grant him equitable relief in the form of a restricted license. We disagree. This Court reviews questions of subject matter jurisdiction and statutory interpretation de novo. *Bruwer v Oaks (On Remand)*, 218 Mich App 392, 395; 554 NW2d 345 (1996); *Heinz v Chicago Road Investment Co*, 216 Mich App 289, 295; 549 NW2d 47 (1996). Const 1963, art VI, § 28 guarantees judicial review of judicial and quasi-judicial administrative decisions that affect private rights or licenses. However, the constitution does not guarantee an unencumbered, de novo right to appeal. Rather, the Legislature has

the authority to control how a person appeals an administrative decision. *McAvoy v H B Sherman Co*, 401 Mich 419, 442-443; 258 NW2d 414 (1977).

We reject plaintiff's argument that the circuit court had the authority to grant him a restricted license because the trial court did not suspend or revoke plaintiff's license as part of his sentence for OUIL. The circuit court's jurisdiction to review defendant's decision to revoke a license is governed by MCL 257.323; MSA 9.2023. Prior to the Legislature's amending of the statute in 1991, the circuit court had the authority to modify defendant's decision to revoke a license except under certain limited circumstances. The court could not modify or set aside a revocation, suspension or denial of a license when a court ordered it as part of a sentence for a drunk driving violation. This Court recognized this limitation on the circuit court's jurisdiction in, among other decisions, *Dabrowski v Secretary of State*, 201 Mich App 218; 506 NW2d 10 (1993), and *Dudley v Secretary of State*, 204 Mich App 152; 514 NW2d 167 (1994).

In 1991, the Legislature further limited the circuit court's jurisdiction by adding MCL 257.323(6); MSA 9.2023(6), which applies in this case. 1991 PA 100. This subsection now provides as follows:

(6) In reviewing a determination resulting in a denial or revocation under section 303(1)(d), (e), or (f) or section 303(2)(c), (d), (e), or (f), the court shall confine its consideration to a review of the record prepared pursuant to section 322 or the driving record created under section 204a, and shall not grant relief pursuant to subsection (3). The court shall set aside the secretary of state's determination only if the petitioner's substantial rights have been prejudiced because the determination is any of the following:

- (a) In violation of the Constitution of the United States, the state constitution of 1963, or a statute.
- (b) In excess of the secretary of state's statutory authority or jurisdiction.
- (c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
- (d) Not supported by competent, material, and substantial evidence on the whole record.
- (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.

The record in this case does not clearly indicate whether defendant revoked plaintiff's driver's license pursuant to MCL 257.303(2)(c); MSA 9.2003(2)(c), or MCL 257.303(2)(f); MSA 9.2003(2)(f). In either case, the outcome remains the same. Upon receipt of the record of

plaintiff's convictions, defendant was required to revoke plaintiff's driver's license under MCL 257.303(3); MSA 9.2003(3), notwithstanding the lack of a court order. See *Matheson v Secretary of State*, 170 Mich App 216, 219; 428 NW2d 31 (1988). Under MCL 257.323(6); MSA 9.2023(6), the circuit court could set aside, not modify, the revocation only if plaintiff's substantial rights had been prejudiced in one of the enumerated ways. *Rodriguez v Secretary of State*, 215 Mich App 481; 546 NW2d 661 (1996). The court did not have jurisdiction to grant plaintiff's petition to modify the revocation because of hardship.

We also reject plaintiff's claim that MCL 257.303; MSA 9.2003, and MCL 257.323; MSA 9.2023, are unconstitutional because they usurp the trial court's authority to grant equitable relief. The statutes do not limit the circuit court's equity jurisdiction. Rather, the court's equity powers do not permit review outside of the statute under the circumstances of this case. An appeal to equity is not alone and by itself sufficient to invoke equity jurisdiction. *Ortiz v Textron, Inc*, 140 Mich App 242, 244; 363 NW2d 464 (1985). Plaintiff's petition simply does not state grounds for equity jurisdiction. See *McMillan v Secretary of State*, 155 Mich App 399, 403; 399 NW2d 538 (1986).

Further, the Driver's License Appeal Board did not err in denying plaintiff's request for an appeal hearing under MCL 257.322; MSA 9.2022, because defendant had no authority to grant plaintiff a restricted license on hardship grounds. Defendant was required to revoke plaintiff's license when it received proof of his conviction. MCL 257.303(3); MSA 9.2003(3). Defendant may not issue plaintiff a license until five years after the date of revocation. MCL 257.303(4)(a)(ii); MSA 9.2003(4)(a)(ii); *Dudley, supra* at 154. Under these circumstances, plaintiff was afforded due process within the process of conviction. *State v Jennings*, 150 Ariz 90, 93; 722 P2d 258 (1986).

Affirmed.

/s/ Maura D. Corrigan  
/s/ Richard Allen Griffin  
/s/ Joel P. Hoekstra